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C.A.No. 5827 OF 1999

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Item No.104

Court No.7

Section XIV

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

CIVIL APPEAL NO. 5827 OF 1999.@@
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Saroj Khemka ...Appellant(s)

Vs.

Indu Sharma & Anr. ...Respondent(s)

Date:03/05/2001 This matter(s) was called on for hearing today.

CORAM:
HON'BLE MR.JUSTICE SYED SHAH MOHAMMED QUADRI
HON'BLE MR.JUSTICE S.N. VARIAVA

For the appellant(s) : Mr.DD Thakur,Sr.Adv.
M/s NN Bhatt,Vijay Prakash,
PK Manohar,Advs.

For the respondent(s) : Mr.Yogeshwar Prasad,Sr.Adv.
Dr.IP Singh,Adv.
Mrs.Rachna Gupta,Adv.

UPON hearing counsel the Court made the following
O R D E R

.SP2
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The appeal is allowed in terms of the signed order.
No orders as to costs.

.SP1

[Naresh Kumar]
Court Master

[Kanwal Singh]
Court Master

[Signed order is placed on the file.]

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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Saroj Khemka ...Appellant

Vs.

Indu Sharma & Anr. ...Respondents

O R D E R@@
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.SP3

In this appeal, by special leave, filed against the order of the High Court of Delhi, dated March 24, 1999, the appellant is a tenant of premises No. 34, Block No.A-III, Oberoi Apartment, Sham Nath Marg, Delhi (for short 'the premises'). She took it on rent from the respondent in the month of April, 1987. On the ground that the respondent needs the premises for her personal occupation when she or members of her family visit Delhi from U.S.A., she filed an application before the Rent Controller under Section 14(1)(e) read with Section 25-B of the Delhi Rent Control Act, 1958 (for short 'the Act') on April 10, 1995. On receipt of notice of the application on May 2, 1995, the

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appellant sought leave of the Court to contest the petition on the ground that the requirement of the respondent for short visits to India once a year would not fall within the meaning of Section 14(1)(e) of the Act so as to justify her eviction.

The learned Rent Controller thought it fit to decline leave to defend the case by order dated July 12, 1995, so did the High Court and dismissed the revision petition filed by the appellant by the impugned order which gave rise to this appeal.

Shri DD Thakur, learned senior counsel for the appellant, contends that the respondent and her husband are residents of U.S.A.; if they come once in a year or two to Delhi, their requirement cannot be treated a bona fide requirement so as to deny to the appellant the right to

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defend the eviction petition under Section 25B of the Act.

Shri Yogeshwar Prasad, the learned senior counsel for the respondent argues that when the respondent or her family members come to Delhi, they need accommodation; in the past her daughter had to suffer for want of accommodation and they cannot be compelled to live with their relations.

Section 25-B of the Act falls in chapter IIIA, which provides for summary trial of certain applications including an application filed under Section 14(1)(e), residential premises required bona fide by the landlord for occupation as a residence for himself or any member of his family dependent on him. While a tenant by resorting to dilatory tactics cannot be allowed to subvert the wholesome provision like Section 25B of the Act which is enacted to

ensure that in case of bona fide personal requirement of a landlord eviction case is decided expeditiously, the right of a tenant to contest such claim of the landlord which is alleged to be a ruse on the facts stated by him cannot also be allowed to succeed by shutting out the defence. Therefore, where a tenant discloses the facts which raise a genuine triable issue and/or constitute a valid defence under Section 25B, he is entitled to contest the eviction case. In this case on the facts alleged by the appellant, the question that arises is whether the need of a non-resident Indian landlord or his family members who visit India for a short stay once in a year or so, can be said to be bona fide requirement for personal occupation as residence within the meaning of Section 14(1)(e) of the Act.

Having regard to the contentions raised by the learned counsel for the parties, the aforementioned question and the requirement of Section 25B(5) of the Act, the learned Rent Controller and the High Court, in our view, ought not to have refused leave to defend the case. The appellant has raised questions of both facts and law which if established would non-suit the respondent so they need to be determined, not in summary proceedings but on contest in regular trial. In this view of the matter we set aside the order of the High Court under challenge affirming the order of the Rent Controller, grant leave to defend the eviction case to the appellant and thus allow this appeal.

The learned counsel for the respondents, however, submits that the Rent Controller may be directed to dispose of the eviction case expeditiously as it was filed as long

back as in 1995 and on the question of leave to defend five years have passed. In our view, it would be just and proper to dispose of the main case itself expeditiously, preferably within a period of one year from today and we issue a direction accordingly.

No orders as to costs.

.SP1

.....J.
[SYED SHAH MOHAMMED QUADRI]

New Delhi,
May 03, 2001.@@
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.....J.
[S.N. VARIAVA]